

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA : CIVIL ACTION  
:   
v. : NO. 22-5055  
:   
INHANCE TECHNOLOGIES, LLC :

**ORDER**

AND NOW, this 20<sup>th</sup> day of May 2024, upon considering plaintiff's notice of voluntary dismissal (DI 97), and intervenor-plaintiffs' notice of voluntary dismissal (DI 101), it is

**ORDERED** this action is **DISMISSED** and the Clerk of Court shall terminate this case.<sup>1</sup>

  
MURPHY, J.

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<sup>1</sup> This is a Rule 41(a)(1)(A)(i) voluntarily dismissal by right. In spite of that, Inhance asks us to dismiss with prejudice. See DI 99. We certainly appreciate the point. Both the United States and the intervenors filed unauthorized motions for summary judgment before the close of pleadings (much less before the close of discovery). Intervenors' astonishing filing included a 50-page brief, 45 pages of the most disputed-looking "undisputed" material facts you'll ever see, and well over 1,000 pages of appendices. And we were repeatedly told in no uncertain terms that this case would carry on regardless of what the Fifth Circuit did — and that we shouldn't even wait for the Fifth Circuit to proceed. If Rule 41(a)(1)(A)(i) left us any discretion, we might well conclude that this case is past the "point of no return." *In re Bath and Kitchen Fixtures Antitrust Lit.*, 535 F.3d 161, 165 (3d Cir. 2008) (quoting *Carter v. United States*, 547 F.2d 258, 259 (5th Cir. 1977)). But it does not. Rather, we must "apply the literal terms of Rule 41." *Id.* And those terms require dismissal without prejudice because *Inhance* served neither an answer nor a motion for summary judgment. *Id.* at 165-66. "The Rule affixes a bright-line test to limit the right of dismissal to the early stages of litigation, which simplifies the court's task . . . . If the defendant has served either an answer or a summary judgment motion it has; if the defendant has served neither, it has not." *Id.* at 165. An ironic result, considering that *plaintiffs* filed the motions for summary judgment, but now escape without prejudice.